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IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1926.

No. 245.

THE STATE OF MINNESOTA,

*Petitioner,*

vs.

FIRST NATIONAL BANK OF ST. PAUL,

*Respondent.*

**PETITIONER'S BRIEF.**

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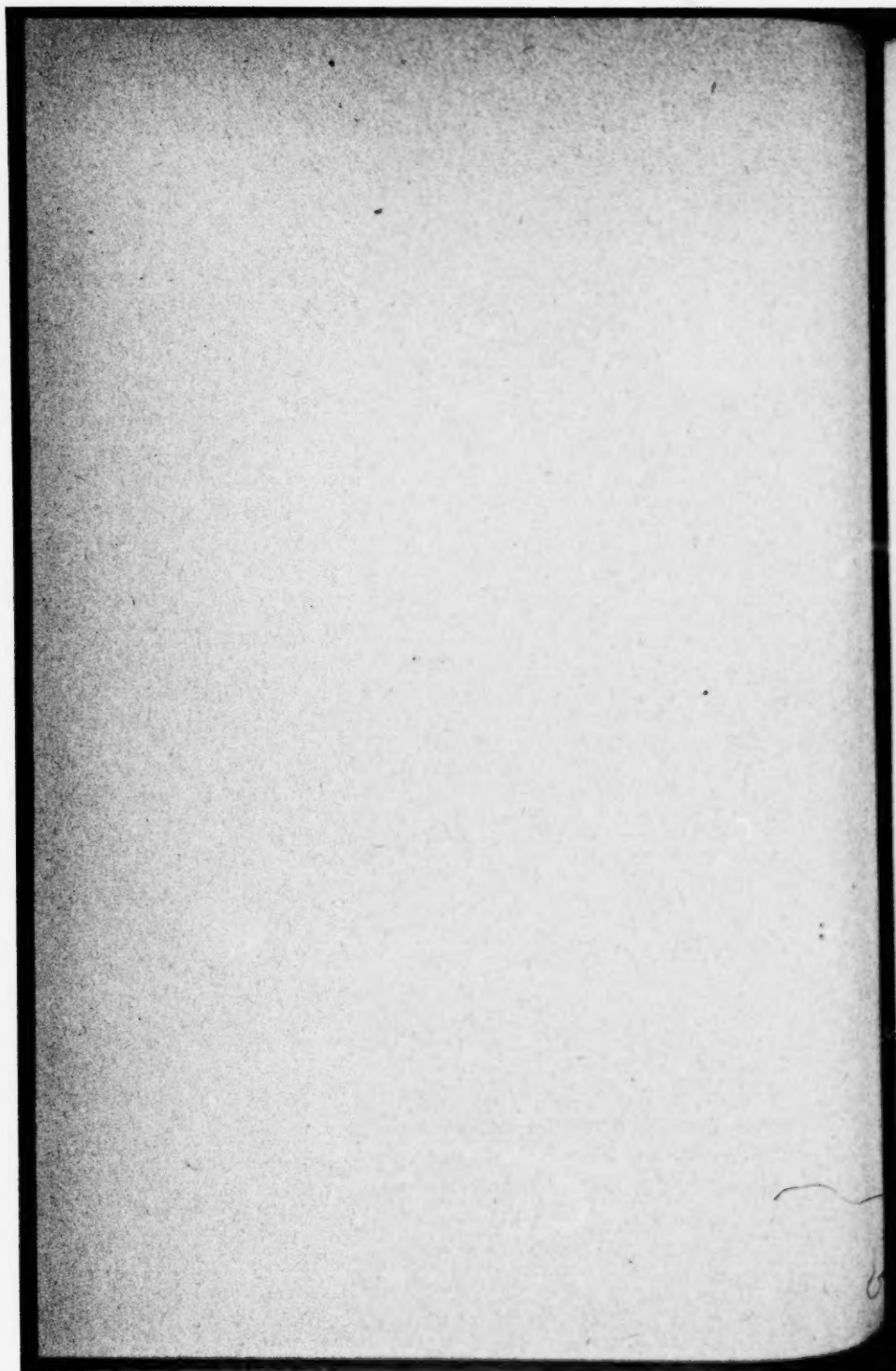
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PETITIONER'S BRIEF.

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STATEMENT OF THE CASE, AND THE PROCEEDINGS  
THEREIN.

In 1921 taxes were imposed upon shareholders of defendant, the First National Bank of St. Paul, in the sum of \$160,859.54. In 1922, they were taxed in the sum of \$160,591.26. In 1921 the rate was 67 mills on forty per cent of each one hundred dollars of value of shares. In 1922 the rate was 61.5 mills on a like valuation. (Findings VI, R. 331.) These taxes re-

mained unpaid and proceedings in the name of the State were instituted for their collection. There were separate suits but they were consolidated and tried together. The bank, answering for its shareholders, alleged that the taxes for each year were assessed in violation of Section 5219, Rev. Stats. U. S. It asserted that the taxes were calculated at a higher rate than taxes assessed on competing moneyed capital in the hands of individual citizens of Ramsey County (in which St. Paul is situated), and of the State of Minnesota. Specifically, it asserted that all "money and credits" were assessed at the rate of three mills on each dollar of value; real estate mortgages were assessed, when registered, at the rate of 15¢ per hundred dollars on the money loaned when the loan period was under five years, and sixty days; and at the rate of 25¢ per hundred dollars when the loan period exceeded five years, and sixty days; and that money and credits and mortgages were held in large amounts in Ramsey County and the State of Minnesota in competition with national banks. It further asserted that national banks and their shareholders were discriminated against in the operation of the state's system of taxing state banks, because, although taxes on state banks were calculated in the same manner and at the same rate as shares of national banks, their assessment directly against the state banks as distinguished from assessments against shareholders, operated to permit state banks to deduct investments in tax exempt state and government bonds from their capital funds, thereby greatly reducing taxes below actual level of taxes upon shareholders of national banks. (Ans. 1921, paragraph IV—VI, IX, 6, 7, 9; Ans. 1922, paragraphs IV—VI, IX, 12-15.)

The trial court found and determined that no material or substantial amount of money and credits listed at the three

mill rate was moneyed capital coming into competition with national banks (266); and it found generally that there was no discrimination against defendant bank in any assessment of moneyed capital in the hands of individuals or moneyed corporations (270, 271). In the memorandum attached to its findings and conclusions, the Court declared that there was no violation of Section 5219, either through the registry tax on mortgages, or in the method of taxing state banks (285, 287).

The bank moved various amendments of the findings and conclusions (288), which motion was denied (301); and it moved for a new trial (302-304), which was denied (305); whereupon it appealed to the Supreme Court of Minnesota from the order denying its motion for a new trial (306).

The Supreme Court reversed the order appealed from. It held, in brief, that proof of the taxation of bonds, and possibly promissory notes and book accounts, held as they were by individuals in substantial amounts, at a three mill rate, while shares of national banks were taxed at a much higher rate, showed a violation of Section 5219 (314-316, 322, 323). It declared that there was no necessity for deciding whether the method of taxing real estate mortgages was in violation of that section (321); and it ruled that the method of taxing state banks was permissible under the decisions of this Court (321-323).

State vs. First Nat. Bank, 204 N. W. 874.

The case then went back to the trial court. It was submitted on the record previously made, and the court, obviously giving effect to the opinion of the Supreme Court, made new findings, as on a new submission, in which it found that moneyed capital held by individual citizens of Ramsey County and Minnesota, coming in competition with the business of

national banks, was taxed at a lower rate than shares of those banks, and it determined that the shares of defendant bank were assessed in violation of Section 5219 (324-336). Judgment was entered in favor of the bank (337, 338). The State appealed from this judgment (339); there was an affirmance by the Supreme Court pursuant to its previous opinion (343); and final judgment was entered in favor of the bank (344).

State vs. First Nat. Bank, 205 N. W. 375.

On November 25, 1925, the state presented its petition for writ of certiorari to this court for a review of the final judgment of the State Supreme Court, which petition was granted on December 14, 1925 (State of Minnesota v. First National Bank, No. 820, October Term, 1925, 269 U. S. 550).

## THE STATUTES.

### *Section 5219, Rev. Stat. U. S.*

The pertinent part of the Act of Congress provided that shares of stock of national banks might be taxed to their owners under state laws in the district in which the bank is located. The limitation was "the taxation shall not be a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state." This statute is set forth in full in our appendix beginning at page 67. The amendment of 1923, in which this limitation was restated is, for reference, set forth in full beginning at page 67 appendix.

*Chap. 416, p. 416, Laws of Minnesota, 1921.*

The Minnesota Act taxing shares of national banks, in force during 1921 and 1922, provided in Section 1, that "shares of stock of every bank in this state organized under the laws of the United States and the moneyed capital of every bank or mortgage loan company organized under the laws of this state shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located."

Section 2 declared that shares of national banks should be assessed against their holders, but in the name of the bank, and that moneyed capital of state banks and mortgage loan companies should be assessed against and paid by the bank or loan company.

Section 3 required officers of these institutions to furnish to the assessor a return showing the amount and number of their shares, the amount of surplus, undivided profits and all other funds, and the amount of legally authorized investments in real estate. The assessor was required to deduct the amount invested in real estate from the aggregate capital and to use the balance as the basis for determining the taxable value of shares and of moneyed capital.

Section 4 required officers of the national banks to deduct and pay taxes assessed against shareholders from annual earnings before declaring any dividend, and authorized the charging of such payments to the expense account of the bank.

Section 5 repealed prior inconsistent laws, and Section 6 provided that the act should be in force on and after its passage. The effective date was April 21, 1921.

This act is set out in full beginning at page 70 of the appendix.

Something of the history of this act should be stated.

As early as 1878 there was in force an act providing for the taxation of shares of state and national banks on their full value, the value to be ascertained substantially as described in the act of 1921. Sections 24-26, Chap. 11, Stat. Minn. 1878.

In 1905 there was an amendment bringing within the act shares of "mortgage loan companies." Mortgage loan companies were not defined (Chap. 60, Laws Minn. 1905).

The 1905 Act remained in force until 1921 when the change was made by which state banks and mortgage loan companies were taxed on their moneyed capital, and taxation of their shares ceased.

In defendant's brief in the State Supreme Court it was said, on the authority of Chap. 8 of the 9th Biennial Report of the State Tax Commission, that the 1921 amendment was made to enable state banks to deduct state taxes from gross income in their federal income tax reports.

The history of the act may be completed, irrelevantly perhaps, by pointing out that in 1925 taxation of shares of state banks and mortgage loan companies was restored and provision was made for the taxation of those shares and shares of national banks, in the same manner as in the earlier acts, but on the basis of 33 1/3% of true value. (Chap. 306, page 387, Laws Minn. 1925.)

The law of 1921, and the others as well, fitted into the system providing for the general taxation of all tangible real and personal property, which may be briefly described as the familiar ad valorem system, with the qualification that various kinds of property were classified and assessed at different percentages of true value. Under these laws assessors in the various taxing districts over the state listed all real and tangible personal property (with exceptions such as the prop-

erty of transportation companies and the like, and with the exceptions hereafter referred to). They then determined its full and true value and reduced that value to assessable value under the classification act. The total of these assessments fixed the amount of property available for taxation. Each taxing district then determined the amount of revenue needed. Here the taxing districts were the city of St. Paul, the County of Ramsey, and the State. Having determined the amount to be raised, that sum was divided by the aggregate of taxable property and the rates for each district resulted; the sum of these fixed the rate at which taxes were charged.

Section 2048-2059, Gen. Stat. Minn. 1913. Classification Act; Section 1988, Gen Stat. Minn. 1913.

*Chapter 285, Laws, Minnesota, 1911.*

The Money and Credits Act in force in 1921 and 1922, first came into effect in 1911. It provided that all money and credits, as defined in Section 816, Revised Laws of 1905, which definition was broad enough to include every form of money and credits, except mortgages on Minnesota real estate, should be listed and taxed at the rate of three mills on each dollar of fair cash value thereof. The assessor might examine the person making the return, under oath, but except for this the return was not subject to impeachment (Sec. 6). All taxes paid under the act were apportioned one-sixth to the State, one-sixth to the County, one-third to the city, village or town, and one-third to the school district in which they were assessed.

The pertinent provisions of this law are set out at page 73 of the appendix.

Section 798, Rev. Laws of 1905, carrying the definition of money and credits covered by Chap. 285, Laws Minn. 1911,

was broadened in 1917 so as to include shares of stock of foreign corporations. Chap. 130, Laws Minn. 1917.

The definition of money from Sec. 816, Rev. Laws 1905, and the definition of credits from Chap. 130, Laws 1917, are set out in full at page 74 of the appendix.

The mortgage registry tax law was enacted in 1907. At first it provided for a tax at the rate of fifty cents for each hundred dollars of debt secured. It was amended at different times thereafter in other particulars not pertinent here. In 1921 and 1922 it provided for a tax of 15¢ on each hundred dollars or fraction of the principal debt or obligation secured by each mortgage on land in Minnesota, and each contract for the purchase of land under which the vendee took possession; when the maturity of the obligation was fixed at a date more than five years and sixty days after the date of the instrument the tax was at the rate of twenty-five cents on each hundred dollars of obligation. The tax was payable on mortgages which were offered for record. After registry and payment of the tax, the mortgage and debt were exempt from all other taxes. The proceeds of the tax were apportioned in the same way as those of the Money and Credits Tax Law. Chapter 328, Laws Minn. 1907, as amended by Chapter 445, Laws Minn. 1921. Appendix, page 76.

The gross earnings tax on trust companies was enacted in 1913, and remained in effect without amendment during 1921 and 1922. It provided that each trust company in the State should pay an annual tax equal to 5% of its gross earnings during the preceding calendar year, the tax to be in lieu of all other taxes and assessments on its capital stock and personal property. It provided, however, that "if any such company shall receive deposits subject to check other than trust deposits, then such company shall be assessed in the same man-

ner as incorporated banks are assessed, and shall pay taxes in the same manner as such banks." Chap. 529, Laws Minn. 1913.

### THE FACTS.

The case for the bank was presented chiefly, if not wholly, on the theory that, in order to show a violation of Sec. 5219, it was only necessary to prove that a substantial amount of notes, bonds, mortgages and other evidences of indebtedness, was taxed at the three mill rate, or at the mortgage registry tax rate, without showing the use of any such securities as capital of a business enterprise competing with national banks. And the findings ultimately made gave effect to that theory. Because of this, if there is to be any consideration of the record, other than a reversal under the authority of *First National Bank of Guthrie Center vs. Anderson*, 269 U. S. 341, our statement of the facts must consist of a recital of testimony, or a summary of it, instead of the usual presentation of ultimate facts.

On May 1st, (the taxing date) 1921, the capital, surplus and undivided profits of defendant bank, after deducting authorized investments in real estate, amounted to \$6,002,218.01. Its shares were taken by the assessor to be of that value. Forty per cent of true value was, as prescribed by statute, taken as their assessed value. The current ad valorem tax rate (67 mills) was applied, resulting in the tax of \$160,859.54. On May 1st, 1922, the bank's capital funds, less real estate, amounted to \$6,528,104.06. Applying the ad valorem rate for 1922 (61.5 mills) taxes on shareholders were fixed at \$160,591.26 (331). Of the 67 mills charged in 1921, all but 4.18 mills were for local purposes. (Ex. A. 347). In 1922, all

but 4.13 mills of the 61.50 mills charged were for local purposes (Ex. B, 348).

We take up first the testimony in the record dealing with the operation of the law taxing money and credits at a flat three mill rate and as to whether or not moneyed capital coming in competition with national banks was brought, in any substantial or material amount, within the operation of that act.

The totals of moneys and credits of all descriptions listed for taxation in the whole state were: 1921, \$425,745,839; 1922, \$400,960,331 (Exhibit 5, 393). For the County the total listings were: 1921, \$84,093,488; 1922, \$83,601,268 (Exhibit 5, 393).

The tax records contained no separation of these totals into the fifteen items under which they were listed by taxpayers, but the county assessor, for the purpose of this case, examined each taxpayer's return for the county, where the return amounted to more than four thousand dollars, and he separated the items in such returns, and he made a further separation of them as between individual and corporate taxpayers. In this way, and to this extent, returns in Ramsey County aggregating \$76,635,111, for 1921, and \$76,665,643 for 1922, were analyzed (Exhibit G, 357).

It was thus shown that taxpayers listed in the county their principal items of money and credits, among others, as follows:

(1) Money subject to check: 1921, \$9,117,749; 1922, \$9,341,138.

(4) Promissory notes: 1921, \$7,265,200; 1922, \$6,825,425.

(5) Bonds: 1921, \$8,290,795; 1922, \$10,795,020.

(6) Real estate mortgages on lands outside the state: 1921, \$2,072,790; 1922, \$1,989,760.

- (8) Chattel mortgages: 1921, \$1,649,369; 1922, \$1,374,835.  
 (10) Book Accounts: 1921, \$36,772,916; 1922, \$34,617,422; and  
 (15) Shares of stock in foreign corporations: 1921, \$8,773,620; 1922, \$8,180,240 (Ex. G, 357).

The aggregates of the more important items in the County as they were divided between individuals and corporations, taken from Exhibit K (361) and Exhibit L (362) were as follows:

(1) Money subject to check: 1921, Corporations, \$5,100,329; Individuals, \$4,017,420; 1922, Corporations, \$5,845,308; Individuals, \$3,494,830.

(4) Promissory notes: 1921, Corporations, \$4,783,754; Individuals, \$2,481,446; 1922, Corporations, \$5,176,615; Individuals, \$1,648,810.

(5) Bonds: 1921, Corporations, \$694,820; Individuals, \$7,595,975; 1922, Corporations, \$853,065; Individuals, \$9,931,955.

(6) Real estate mortgages on lands outside the state: 1921, Corporations, \$105,320; Individuals, \$1,967,470; 1922, Corporations, \$66,360; Individuals, \$1,923,400.

(8) Chattel Mortgages: 1921, Corporations, \$1,264,685; Individuals, \$384,684; 1922, Corporations, \$1,027,168; Individuals, \$347,667.

(10) Book Accounts: 1921, Corporations, \$34,206,204; Individuals, \$2,566,712; 1922, Corporations, \$32,185,187; Individuals, \$2,502,235; and

(15) Shares of foreign corporations: 1921, Corporations, \$4,046,920; Individuals, \$4,726,700; 1922, Corporations, \$2,124,835; Individuals, \$6,055,405. (Exhibit K and Exhibit L, 361, 362.)

No similar separation for the whole state was practicable. One was made for both State and County by the State Tax Commission in 1918. The results are set forth in Exhibit II, (358), and Exhibit I, (359), and may be taken as typical (152). So far as material here, we think that it may be assumed that in 1921 and 1922 the different items listed as money and credits over the whole state were in somewhat the same relative proportion to the whole as in Ramsey County.

The president of defendant bank testified, in substance, that in his opinion each of these items of money and credits represented moneyed capital coming in competition with national banks. His understanding of what constituted moneyed capital coming into competition with national banks is fairly reflected in his statements: "that anything which takes money is competitive with us, who are loaners of money" (212); "we feel competition on anything wherever money is employed, naturally" (213). The president of the Twin Cities National Bank gave somewhat similar testimony (176-179). The president of the Central Metropolitan Bank, a state institution, a witness on behalf of the state, said, substantially, that he saw no appreciable competition in any of the items described in the money and credits list (234-246). The county assessor of Ramsey County testified that he customarily examined and familiarized himself with the contents of the lists returned by taxpayers, receiving all the large ones himself (159-161). He said, as to bonds, that in almost all cases they were securities bought for investment purposes. He made clear that he meant that they were held outside of the business in which the taxpayer was engaged (161-162). As to promissory notes, he said that they were reported very largely by corporations and business concerns and were taken for past due indebtedness. He was not able to throw any light on the nature of promissory notes

by individuals (163). As to chattel mortgages, he said that the items in the lists represented "very largely"—"practically all" mortgages taken by furniture and automobile companies to secure deferred payments on sales of those articles (164-165, 170-171). As to book accounts, he said that they represented, almost entirely, sums remaining unpaid on May 1st on account of merchandise previously sold. And generally, he said that the lists of money and credits upon which assessments were made in Ramsey County did not include money and credits "in the hands of such concerns as investment houses"; that only two small investment houses were to be found in the money and credits lists in 1921 and 1922, the highest return of one amounting to \$14,790.00, the other \$94,100.00 (165-166, 169-170).

The additional testimony in the case, relating to the assessment of money and credits at the three mill rate, dealt also with the mortgage registry tax, and its effect on national banks. Apparently its main purpose was to trace into the hands of individual residents of Ramsey County and the State investments made by them in promissory note, bonds and mortgages, thereby identifying in some measure, at least, the exact nature of the items which must have been reported by individual taxpayers under those heads. In this way there came into the record, casually, descriptions of some investment concerns and their activities. We state the evidence emphasizing that which describes such enterprises and undertake to summarize the showing in that respect.

## INVESTMENT COMPANIES.

The following investment companies were described or referred to:

The Wells-Dickey Company was a Minnesota corporation having its principal place of business in Minneapolis with capital stock of \$1,200,000 (19). It was engaged in the business of dealing in bonds and mortgages. In 1921 it negotiated real estate loans almost wholly outside Minnesota, and sold mortgages through travelling salesmen and branch offices over the whole United States, but mostly in the Northwest and in Canada. In 1922 it negotiated mortgages only for the Metropolitan Life Insurance Company of New York (21). It bought and sold bonds, in both years, dealing with banks both in buying and selling, but mostly with individuals (31). Its bond sales in Minnesota for 1922 amounted to at least thirteen million dollars (21-24). It was estimated that mortgages which it had disposed of and which remained outstanding on May 1, 1921, amounted to more than \$25,000,000 (21).

The Investment Service Company of St. Paul, a Minnesota corporation, capital \$50,000, was engaged in the business of aiding people in their financial affairs, and it negotiated real estate mortgages and bought bonds for its customers (80). The mortgage loans previously so negotiated and outstanding in 1921 and 1922 aggregated about \$1,100,000 (81).

The Provident Loan Society of St. Paul, a Minnesota corporation, capital \$50,000, was engaged in the business of loaning money in small amounts to wage earners for the purpose of protecting them against "loan sharks". It was essentially a benevolent institution (173, 174).

In Exhibit R (371) is reference to "three of the larger cattle loan and investment companies" operating in Minnesota.

There was testimony that one of these cattle loan and investment companies was a Minnesota corporation having its principal place of business in Ramsey County (194). It had some connection with the Capital National Bank of St. Paul and the Capital Trust and Savings Bank of St. Paul (194). There is no testimony as to the capital of any of the companies referred to in this exhibit, nor is the nature of their business described further than as may be inferred from the exhibit that they deal in "cattle loan paper." The assessor said that he did not know there were any cattle loan companies in Ramsey County (172).

Exhibit I (370) is a summary of "dealings in local investment market" as compiled from sales reported to the Federal Reserve Bank in Minneapolis by "different investment houses located in the Twin Cities." The testimony was that these reports of sales came from eighteen investment houses located in the Twin Cities (185). Eleven were Minnesota corporations (185). Trust Companies were included in this classification. Banks were not, except possibly savings banks (191-192).

The county assessor said that he knew of only two investment companies which had made returns of money and credits for taxation. Their returns were, for 1921, \$11,860, and \$61,640, respectively, and for 1922, \$14,790 and \$94,100, respectively (165, 166).

The president of defendant bank said that he had taken at random eleven statements of borrowers of the bank and found nearly a million and a half dollars loaned to them by their officers or employees (204). The head of one corporation apparently a client of the bank said that sometimes officers and employees of the company had small deposits with it, but that they did not want any such loans. The average amount so deposited was between one hundred thousand and one hundred

and fifty thousand dollars. He said a large part of that would represent commissions of salesmen, which were not collected until the end of the year (119, 120). Another said that his corporation carried accounts for its employees, for the purpose of fostering savings among its employees (126). Another in stating the sources from which the corporation borrowed money said that occasionally "we call on our deposit and house accounts where officers and employees will leave their money on deposit." He said the average of the account would be between one hundred thousand and one hundred and fifty thousand dollars (130, 131).

We are unable to glean from the record any other evidence concerning the existence, nature, operations, capital, or amount of taxes paid by any individual or corporation engaged in any form of investment business, except that hereafter to be stated under the headings "note brokers" and "trust companies."

#### NOTE BROKERS.

There was testimony from many sources showing that "note brokers" loaned to commercial houses in St. Paul and elsewhere in the state great sums of money aggregating annually as much as one hundred million dollars (111, 125, 128, 130, 131, 136, 203). It was asserted that as much as fifteen million dollars was so loaned in St. Paul (203). The president of the defendant bank said that these note brokers were in competition with his bank and all other banks (204, 212). These note brokers, it was said, sold the "commercial paper" which arose out of these loans, mostly to banks, although they sometimes offered it to individuals and to some extent it was bought by them (100, 114, 115, 125, 133, 134, 178, 179, 205).

One witness said there were at least two note brokers in Minnesota (109); they were corporations (114). Another wit-

ness said that he dealt with "two firms", "one firm in New York and one firm in Minneapolis and St. Paul" (128). The president of defendant bank said that there were note brokers in St. Paul and Minneapolis, but did not describe or identify them. He declared that the principal note brokers were in Minneapolis (205, 206). The auditor of the bank said that there were corporations in Minnesota dealing in commercial paper and that the capital stock of one of them, Lane, Piper & Jaffray, having its principal place of business in Minneapolis, amounted to \$250,000 (190, 191).

There was no other testimony relating to the identity, nature, location or capital of note brokers, or as to where, or in what amount, they were taxed.

### MORTGAGES.

During the eleven months ending June 30, 1921, mortgage registry taxes paid in Minnesota amounted to \$461,406.58. The value of the mortgages, if all were given for a period longer than five years and sixty days, was, therefore, \$184,560,000; if all were given for periods less than five years and sixty days, their value was \$307,600,000 (153). Probably the latter sum is nearer the actual value. For the year ending June 30, 1922, mortgage registry taxes paid in the state amounted to \$529,923.47 (153). The value of mortgages given was, therefore, somewhat larger than in the previous year. To arrive at the value of mortgages outstanding, and held by individuals or corporations at any given time, the amount of those registered must be multiplied by some figure, probably more than three, representing the average life of such mortgages.

In 1921, mortgages registered in Ramsey County, and owned by residents of Ramsey County, amounted to \$6,351,105. For

the same period such mortgages in favor of Minnesota corporations, except savings banks and trust companies, amounted to \$3,537,942 (147); in 1922, to April 30, such mortgages registered in favor of individual residents of Ramsey County amounted to \$2,204,351, and those in favor of Minnesota corporations amounted to \$996,113 (147).

The testimony relating to dealers in mortgages referred almost exclusively to the operations of banks and of trust companies taxed as banks. The exceptions were Wells-Dickey Company of Minneapolis, and the Investors Service Company of St. Paul, heretofore described.

In Exhibit Q (370) heretofore referred to, compiled from the Federal Reserve Bank's "summary of local investment market" it is indicated that real estate mortgages were sold by different investment houses located in the Twin Cities including trust companies (191, 192), as follows: In 1921, farm mortgages, \$10,891,470; city mortgages, \$3,144,599; and in 1922, farm mortgages, \$10,103,990; and city mortgages, \$6,582,592.

There was testimony as to the manner of making real estate mortgage loans. It was the practice of the Wells-Dickey Company to make these loans through banks in whose territory the land lay, completing the loans in its Minneapolis office and leaving the collection of interest and principal to the local banks (20). The Capital Trust & Savings Bank received its applications for loans through such local banks. The testimony was that the local "bank handles the larger port of its farm loan business through such a connection" (141). The Merchants Trust & Savings Bank got its mortgages in quite a similar way and the loans were completed in the local bank. It was said that the trust company received in this way, the loans over and above those which the local banks were able to make for themselves (98, 99). Loans of the Southern Minne-

sota Joint Stock Land Bank were made through local bankers. When applications were made directly to the land bank, a local bank was called upon to close the loan and was credited with the application and was paid its commission as if the application had been made to it (87, 88). There was no testimony indicating that any different practice prevailed with any other company. City loans were made, of course, directly to borrowers, but city loans for periods not exceeding one year, to which national banks are limited, were negligible (61, 62, 141). Relatively, mortgage loan investments by national banks in Minnesota were small. Their aggregate investments over the state were, in 1921, \$19,713,000 (Exhibit N, 365) and in 1922, \$25,409,000 (Exhibit N, 366). St. Paul national banks in 1921 held only \$339,000 of mortgage loans and in 1922 only \$377,000 of such loans (Exhibit N, 365, 366). The First National Bank of St. Paul did not loan any money on real estate mortgages and did not deal in them (217, 218).

#### TRUST COMPANIES.

Defendant did not in its answer allege that Sec. 5219 was violated in the taxation of trust companies, (other than those receiving deposits), on a gross earnings basis. In its arguments and in its briefs below it made that contention. The trial court ruled against the bank by finding that various trust companies were affiliated with national banks, particularly because defendant bank and the Northwestern Trust Company of St. Paul were affiliated (269-270). The Supreme Court made no ruling on the subject.

There were in the whole state on June 30, 1921, twenty-six trust companies (Exhibit C, 350, 351) and twenty-seven such companies on April 27, 1922 (Exhibit E, 354, 355). Fifteen of

these were taxable on the "gross earnings basis" (Exhibit J, 360). The testimony refers to three St. Paul trust companies and Exhibit J names two more which were located in St. Paul. Only two Minneapolis trust companies are referred to in the record. The aggregate capital of trust companies over the state was, in 1921, \$7,647,907.42 (Exhibit C, 351); in 1922, \$8,054,380.44 (Exhibit D, 355). The aggregate capital of the trust companies paying gross earnings taxes was \$2,135,000, of which \$1,000,000 was represented by the Northwestern Trust Company of St. Paul (Exhibit J, 360—date does not appear). All trust companies other than those named in Exhibit J were taxed, because they received deposits as if they were banks.

The capital and surplus of the Northwestern Trust Company of St. Paul amounted, in 1921, to \$1,253,217 (145); in 1922, to \$1,480,000 (63, 64). Eighty-seven per cent of its capital stock was owned by shareholders of defendant bank. Five or six per cent more of its stock was held in trust funds in the hands of the trust company itself. The stock of the defendant bank and this trust company were held "practically in the same ownership" (68, 69, 74). It was shown, for 1921, that the gross earnings tax on this company was much smaller than would have been a tax calculated at the bank rate on the value of its shares. There was no like showing for 1922; and there was no similar showing for either year as to any other trust company in the county or state.

Each witness who was asked whether trust companies and banks were competing institutions made clear his belief that the two classes of institutions occupied essentially different fields and were not in a practical or business sense in competition (40-43, 103-142).

We see no occasion to set forth the facts respecting the remaining St. Paul trust companies further than to state that

both of those concerning which there was testimony were connected or affiliated with national banks in St. Paul, and that because they received deposits they were taxed as banks. There is no mention in the record of the activities of the two remaining companies referred to in Exhibit J (360) supra.

### STATE BANKS.

On June 30, 1921, there were 1160 state banks in Minnesota other than savings banks and trust companies. Their aggregate capital funds were \$42,598,042 (computed from Exhibit C, 350). They held United States bonds of the value of \$13,369,840.32 (Exhibit C, 350). On April 7, 1922, there were 1144 such banks. Their aggregate capital funds were \$41,566,624 (computed from Exhibit E, 355). They held United States bonds of the value of \$9,830,679.57 (Exhibit E, 354). Their investments in state and municipal bonds were not shown.

In Ramsey County, on May 1, 1921, the aggregate capital funds of state banks, after deducting real estate, were \$1,840,540.39. Their investments in tax exempt United States, state and municipal bonds amounted to \$2,109,471. For 1922, their capital funds were \$1,615,915.19 and their tax exempt bonds were \$1,750,860 (Exhibit S, 372, 373, and computations therefrom).

In 1921 there were 340 national banks in the State of Minnesota. Their aggregate capital funds were \$73,870,000. They held United States Government bonds of the value of \$41,190,000. In 1922, there were 343 national banks in the state with aggregate capital funds amounting to \$74,295,000. Their investments in Government bonds amounted to \$49,505,000 (computed from Exhibit M, 363, 364).

In 1921, national banks in Ramsey County had capital funds aggregating \$11,133,090.52, and bonds amounting to \$8,605,854.80. In 1922, their capital funds were \$11,810,660.76, and tax exempt securities amounted to \$17,815,740.36 (Exhibit S, 372, 373).

But the testimony was, without dispute, that neither in 1921 nor 1922 did any state bank, anywhere in the state, deduct from the value of its stock any sum whatever on account of investments in any tax exempt bonds or securities (249-251).

#### PURPOSE AND EFFECT OF MONEY AND CREDITS LAW.

The State offered evidence aimed to show that the Money and Credits Law was not enacted in hostility to national banks, nor in hostility to state banks, or their shareholders. The report and recommendation of the tax commission, a part of which appears as State's Exhibit 4 (389-392), presented to the legislative session of 1911, was received in evidence for this purpose. In brief, the commission expressed the opinion that the attempted taxation of money and credits at regular ad valorem rates had always and everywhere failed, and that property of that kind could be made to yield more revenue if assessed at a low flat rate. The Law of 1911 obviously was framed and adopted pursuant to that recommendation. And the state offered evidence tending to show that over the whole state, and in Ramsey County, the reduction of the tax rate to three mills produced, after the first year, more in taxes than the State or County previously were able to collect at much higher rates. The collections since 1907 to and including 1922, (State's Exhibit 5, 393) were as follows:

## For the Entire State.

Year	Amount of Assessment	Rate of tax in Mills	Amount of Tax
1907	\$ 18,559,999	25.91	\$ 480,864
1908	14,647,763	26.98	395,197
1909	13,244,942	27.79	368,077
1910	13,919,806	28.	379,754
1911	115,676,126	3	347,025
1912	134,826,568	3	404,477
1913	156,252,274	3	468,760
1914	197,625,914	3	592,878
1915	213,078,632	3	639,249
1916	223,858,138	3	671,831
1917	285,662,756	3	856,993
1918	330,270,597	3	991,446
1919	359,112,619	3	1,079,973
1920	443,092,869	3	1,329,365
1921	425,745,839	3	1,277,365
1922	400,960,331	3	1,202,878

## For Ramsey County.

Year	Amount of Assessment	Rate of tax in Mills	Amount of Tax
1907	\$ 1,382,813	29.25	\$ 40,447
1908	849,692	32.20	27,360
1909	991,671	33.49	33,211
1910	2,756,850	30.20	83,251
1911	24,410,381	3	72,231
1912	25,595,161	3	76,785
1913	34,571,164	3	103,714
1914	41,860,131	3	125,580
1915	43,352,616	3	130,058
1916	48,704,976	3	146,115
1917	62,641,448	3	187,924
1918	72,337,666	3	217,013
1919	76,867,049	3	230,601
1920	90,788,455	3	272,365
1921	84,093,488	3	252,281
1922	83,601,268	3	250,804

It is helpful to show these results in comparison with taxes on shares of national banks over the State and in the County.

Revenues received by the State, for exclusively state purposes, in the years for which statistics are available, from shares of national banks, and from money and credits, were as follows:

Year	Shares	Money and Credits
1907	\$ 48,768	
1908	50,113	
1909	43,876	
1910	45,834	
1911	67,708	\$ 57,837
1912	64,309	67,412
1913	101,563	78,126
1914	81,831	98,813
1915	63,324	106,541
1916	67,111	111,971
1917	93,950	142,832
1918	69,132	165,241
1919	165,966	174,995
1920	117,764	221,560
1921	102,488	212,873
1922	100,405	200,479

These figures are from State's Exhibit 7, (395), and State's Exhibit 5, (393). The state revenue from money and credits is one-sixth of the whole, and is so calculated from Exhibit 5. The receipts of the state from taxes on money and credits prior to 1911 are not shown. The total of such taxes collected for state and local purposes were as follows: 1907, \$480,864; 1908, \$395,197; 1909, \$368,077; 1910, \$379,754. State's Exhibit 5, (393). They were decreasing.

Taxes collected in Ramsey County on shares of national banks and money and credits, were as follows:

Year	Shares	Money and Credits
1907	\$ 85,315	\$ 40,447
1908	101,747	27,360
1909	105,425	33,211
1910	102,873	83,251
1911	106,095	72,231
1912	109,965	76,785
1913	170,931	103,714
1914	186,272	125,580
1915	194,425	130,058
1916	156,776	146,115
1917	174,694	187,924
1918	194,512	217,013
1919	283,836	230,601
1920	301,065	272,365
1921	294,219	252,281
1922	285,070	250,804

These figures are from State's Exhibit 5, (R. 393), and State's Exhibit 6, (R. 394).

#### EQUALITY OF TAXES ON BANK SHARES AND TAXES ON MONEY AND CREDITS.

And the state undertook to show that taxes on shares of national banks were about equal to three-tenths of one per cent of their resources—that is, they were about equal to a tax of three mills on the money which the banks controlled and used in making their loans and investments.

In 1921, defendant's resources were \$46,015,545.29. In 1922, they were \$52,927,523.88. The taxes actually charged against shareholders, and three mills of resources, were:

	1921	1922
Defendant's taxes	\$160,859.54	\$160,591.26
Three mills	138,046.63	158,782.58

(These calculations are based upon State's Exhibit T, R. 374.) The taxes upon shareholders are those actually assessed. (Findings of trial court, 331.) Three mill taxes are calculated by subtracting tangible resources from total resources and applying the three mill rate.

For Ramsey County a similar comparison is, based on Exhibit M, (363) :

	1921	1922
Taxes on bank shares	\$294,219.00	\$285,070.00
Three mills	306,342.00	322,299.00

For the whole state the comparison is:

	1921	1922
Taxes on bank shares	\$1,279,418.00	\$1,302,409.00
Three mills	1,551,431.00	1,586,142.00

In this calculation, Exhibit M is again used, and in arriving at taxes on shares the average tax rate for the state, 52.67 mills in 1921, and 54.23 mills in 1922, is used.

## ASSIGNMENTS OF ERROR.

1. The Supreme Court of Minnesota erred in holding that "credits in the form of interest-bearing demands and money invested in loans or securities, whether such investments are of a permanent character or for a temporary purpose" \* \* \* "are deemed moneyed capital used in competition with national banks within the meaning of Section 5219" (R. 314).

2. The Supreme Court of Minnesota erred in holding that "shares of stock held by individuals in corporations the business of which is the making of profit by using their capital as money, that is, by loaning it at interest or investing it in interest bearing securities, are deemed money capital used in competition with national banks within the meaning of Section 5219" (R. 314).

3. The Supreme Court of Minnesota erred in holding that "surplus funds are moneyed capital" and "that placing such funds at interest in the form of ordinary loans or investing them in interest bearing securities, whether as permanent personal investments or for temporary purposes, brings them in competition with national banks within the meaning of Section 5219 as it stood prior to the amendment of 1923" (R. 316).

4. The Supreme Court of Minnesota erred in determining that the evidence showing that individual citizens held large amounts of notes, bonds, book accounts and interest bearing securities, and that they were assessed on them at the rate of three mills on each hundred dollars of value, required a finding that moneyed capital in the hands of individual citizens coming in competition with national banks was assessed at a lower rate than bank shares in violation of Section 5219 (L. 323).

## ARGUMENT.

The issue here is one of law, not of fact.

There is in the case the formal, general finding of fact that during 1921 and 1922 a substantial portion of the money and credits listed in Ramsey County consisted of moneyed capital in the hands of individual citizens of said County coming in competition with the business of national banks in the county, which was taxed at a lower rate than shares of national banks (33). This finding deals only with moneyed capital alleged to have come under the operation of the Money and Credits Act.

It may be claimed that this finding binds this Court and may not be reviewed. We submit, however, that it is not truly a finding of fact, or at most, is one so dependent upon the issue of law as to be in substance and effect a decision on the law question. This is made perfectly clear by a consideration of the proceedings below and the comments of the Supreme Court respecting the case.

The trial court first found that no substantial part of the money and credits listed in Ramsey County in 1921 and 1922 consisted of moneyed capital coming in competition with national banks. In the Supreme Court this finding was treated as an application of an erroneous interpretation of Section 5219 to facts which were undisputed. Almost at the beginning of the opinion the Court said:

"The facts are undisputed and the controversy is in respect to the conclusions to be drawn therefrom." (309.)

Later it said:

"It appears from the undisputed testimony drawn out by the plaintiff that nearly all the above mentioned bonds held by individuals represented investments made by such individuals out of their surplus funds." (316.)

And finally it said :

"The undisputed and unquestioned facts shown by the record convinces us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of Section 5219 as interpreted by the Supreme Court of the United States." (323.)

The Court's statements of applicable principles of law bear out our assertion. It said, after reviewing some of the decisions of this Court :

"As we understand these decisions, credits in the form of interest bearing demands and money invested in loans or securities, whether such investments are of a permanent character or for a temporary purpose, and also shares of stock held by individuals in corporations, the business of which is the making of profit by using their capital as money, that is, by loaning it at interest or investing it in interest bearing securities, are deemed moneyed capital used in competition with national banks within the meaning of Section 5219." (314.)

And again :

"Plaintiff urges that personal investments of surplus funds should not be deemed to have been made in competition with the banks, and that only a comparatively small part of promissory notes and book accounts is held by individuals. Surplus funds are moneyed capital; and the Federal Courts, if we understand their decisions correctly, have repeatedly held that placing such funds at interest in the form of ordinary loans or investing them in interest bearing securities, whether as permanent personal investments or for temporary purposes, brings them in competition with national banks within the meaning of Section 5219 as it stood prior to the amendment of 1923." (316.)

Obviously, these views compelled the conclusion and required a finding that individual citizens of Ramsey County held and listed for taxation moneyed capital coming in competition with national banks in violation of Section 5219.

The case went back to the trial court for proceedings consistent with the views so expressed by the Supreme Court. It was resubmitted upon the original record and thereupon the Court reversed its original findings and made the finding now under consideration. The State then appealed, and the Court said: "The questions presented are those decided by this Court on an appeal by the defendant from an order denying a new trial," and the judgment was affirmed, *per curiam*, on the grounds set forth in the opinion from which we have quoted. (343.)

The finding, therefore, is that in 1921 and 1922 there was a substantial amount of money and credits listed for taxation in Ramsey County which consisted of money capital coming in competition with national banks, within the meaning of the term "coming in competition with national banks" as the Supreme Court of Minnesota conceived it to be and stated it to be, that is, that there was a substantial amount of bonds so listed for taxation by individuals, and possibly that there was a substantial amount of promissory notes and book accounts so listed which represented purely personal investments of surplus funds in interest bearing securities. And involved in the finding is the theory of law that bonds, and possibly notes and book accounts, are *per se* moneyed capital coming in competition with national banks.

The finding is one in name only and the ruling of law which it carries is open to review.

The demonstration of this comes in merely pointing out that the facts recited by the Supreme Court, and upon which the decision rests, are not open to dispute, and are not disputed

here. If the Court's view of the law was right, the general finding was fully justified. If it was not right, the finding would not have been, and could not have been, made. Plainly there was a decision on an issue of law. At most the issue was one of mixed law and fact.

This Court in *Kansas City S. R. C. vs. Albers Com. Co.*, 223 U. S. 573, 591, said:

"We may examine the entire record, including the evidence, if properly incorporated therein, to determine whether what purports to be a finding upon questions of fact is so involved with and dependant upon such questions of law as to be in substance and effect a decision of the latter."

In *Truax vs. Cardigan*, 257 U. S. 312, the Court said:

"Another class of cases in which this Court will review the finding of the court as to the facts is when the conclusion of law and findings of fact are so intermingled as to make it necessary, in order to pass upon the question, to analyze the facts."

In *Aetna Life Insurance Company vs. Duncan*, 266 U. S. 393, 389, 394, this Court said:

"The rule is settled that the decision of a state court upon these questions of fact ordinarily cannot be made the subject of inquiry here. See, for example, *Missouri, K. & T. R. Co. v. Haber*, 169 U. S. 613, 639, 42 L. ed. 878, 887, 18 Sup. Ct. Rep. 488; *Smiley v. Kan.*, 196 U. S., 447, 453, 454, 49 L. ed. 546, 550, 25 Sup. Ct. Rep. 289."

"To this general rule there are two equally well-settled exceptions: '(1) Where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a Federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts.'"

THERE WAS NO EVIDENCE THAT A SUBSTANTIAL AMOUNT OF  
MONEYED CAPITAL, WITHIN THE MEANING OF SEC. 5219,  
WAS TAXED IN RAMSEY COUNTY OR IN MINNESOTA  
AT A LOWER RATE THAN BANK SHARES.

The decision here under review rests essentially, if not wholly, upon the theory that personal investments of surplus funds in bonds and like securities, by individuals, whether engaged in any investment business or not, are to be deemed moneyed capital coming in competition with national banks within the meaning of Section 5219. The Court indicated, further, that in its opinion similar investment by corporations, regardless of the nature of the corporate business, made shares of the corporation moneyed capital in the hands of their owners within the meaning of that section, although plainly this view was not a factor in the decision.

But this Court, pending this appeal, has made clear, if it had not previously done so, the error of such an interpretation. In *First National Bank of Guthrie Center v. Anderson*, 269 U. S. 341, all doubt on the subject was so decisively removed that there is no need to refer to the earlier decisions. The parts of the opinion most pointedly dealing with the question decided by the Minnesota Supreme Court, say:

"The term 'other moneyed capital' in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. *Mercantile Nat. Bank v. New York*, supra, 157 (30 L. ed. 902, 7 Sup. Ct. Rep. 826); *First Nat. Bank v. Chehalis County*, 166 U. S. 440, 461, (41 L. ed. 1069, 1078, 17 Sup. Ct. Rep. 629)."

"Moneyed capital is brought into such competition where it is invested in shares of state banks or in private bank-

ing; and also where it is employed, substantially as in the loan and investment features of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds or other securities with a view to sale or repayment and reinvestment. *Mercantile Nat. Bank v. New York*, supra, 155-157 (30 L. ed. 901, 902, 7 Sup. Ct. Rep. 826); *Palmer v. McMahon*, 133 U. S. 660, 667, 668, (33 L. ed. 772, 775, 776, 10 Sup. Ct. Rep. 324); *Talbott v. Silver Bow County*, 139 U. S. 438, 447, (35 L. ed. 210, 213, 11 Sup. Ct. Rep. 594)."

\* \* \* \*

"It, of course, would exclude bonds, notes or other evidence of indebtedness when held merely as personal investments by individual citizens not engaged in the banking or investment business, for capital represented by this class of investments is not employed in substantial competition with the business of national banks."

The only point, therefore, decided below in favor of defendant went contrary to the decisions of this court, and if the judgment is to stand the affirmance must be upon the ground that the evidence was such as to require a finding and determination here that a substantial amount of moneyed capital employed as in the banking or investment business was taxed at a lower rate than bank shares. We submit no such showing was made. We shall consider the evidence, from this view point, first as it related to individuals, and then as it related to corporations, since it may be that shares of corporations constitute moneyed capital in the hands of individual owners.

The evidence as to individuals was that large amounts of bonds and mortgages were bought in the state and county, and that individuals listed for taxation large amounts of money, promissory notes, bonds, chattel mortgages, book accounts and the like, but there was no evidence tending to show that any

of the securities so bought, or so listed for taxation, were held or employed by any individuals in the banking or investment business, or in any other business. The testimony of the assessor, as far as it went, was to the contrary. If, in saying that there were only two investment concerns represented in the money and credits tax list, he had reference to individuals or partnerships engaged in that business, the sufficient answer is that their assessments were so insignificant in amount as not to be worthy of comment.

There were incidental references to note brokers. No one stated that these note brokers were individuals. The various witnesses probably had in mind identical brokers. One witness referred to them as "firms"; another witness said that both brokers with whom he dealt were corporations. Only one such broker was identified by them, that one, Lane, Piper & Jaffray, was a corporation. There was no testimony whatever indicating the amount of moneyed capital employed by any individual broker. It cannot be said, therefore, that there was any testimony that any individual citizen of the state employed capital in conducting a note brokerage business.

There was testimony explanatory of Exhibit Q (370), that "the other seven firms" reporting sales of securities to the Federal Reserve Bank were branch sales offices of corporations in other states, or partnerships, or unincorporated companies of the state (192). Here the witness definitely undertook to state that there were certain partnerships and unincorporated companies of the state engaged in selling securities, and he plainly had in mind a distinction between corporations on one hand, and partnerships and unincorporated companies on the other hand. But he was unable to state how many of the seven firms were branch offices of corporations in other states;

and there was no testimony whatever concerning the moneyed capital of any partnership or unincorporated company referred to in the exhibit.

There was no other testimony whatever concerning any moneyed capital of individual citizens of Ramsey County or of Minnesota. It is clear, therefore, beyond dispute that there was no evidence upon which the Supreme Court of Minnesota could have found that "individuals", other than as shareholders, held any moneyed capital within the meaning of section 5219, as interpreted in *First National Bank of Guthrie Center vs. Anderson*, *supra*. Was there sufficient testimony to have justified or required a finding that individual shareholders held a substantial amount of such capital and that it was taxed at a lower rate than bank shares? There was no finding on such an issue in the state courts, and no decision respecting it. We respectfully doubt whether this court will or can hold that the case called for such a finding and decision.

Large amounts of bonds, mortgages and securities were, as indicated by Exhibit Q, and testimony explanatory thereof, sold in the Twin Cities by eleven corporations. These corporations were organized under the laws of Minnesota. There is no testimony whatever as to their identity, their places of business, or the nature of their business, except as may be inferred from the exhibit itself; particularly, there is no evidence whatever of the amount of capital employed by them. And there is no evidence as to what their taxes were. It appears affirmatively that some of them were trust companies. And hence it appears that some of them were taxed as banks. Some the testimony was, may have been savings banks.

It appears from Exhibit (R. 371), and testimony explanatory thereof (187, 193, 194), that three corporations sold in Minnesota a large amount of cattle loan paper. Two of these

were Minnesota corporations. One of them was connected or affiliated with the Capital National Bank of St. Paul. It also appears that while they sold cattle loan paper amounting, in 1921, to \$12,738,373.95, and in 1922, to \$9,945,556.67, their sales to individuals in Minnesota amounted to only \$580,665, in 1921, and \$365,083, in 1922, which, when taken in connection with the apparent relationship between one of these companies and a national bank, suggests that these corporations may have been agencies or instrumentalities of banks through which credit requirements of the livestock market of Minnesota, and the Northwest, were taken care of. Here, too, the corporations, with a single exception, are not identified. There is no description of their business, such as might help to determine whether they were in competition with the business of banking. There is no disclosure of the amount of capital employed by any of them and it does not appear in what amount any of them was taxed.

There was testimony that there were two corporate note brokers doing business in St. Paul. It does not appear to a certainty whether they were Minnesota corporations or foreign corporations, and there is no evidence of the amount of capital employed by them anywhere, or what or where they were taxed. One of the corporations so referred to may have been, and probably was, Lane, Piper & Jaffray, hereinafter referred to.

There was testimony that the financial reports, or credit statements, of eleven clients of defendant bank contained the information that they had borrowed from their officers and employees sums aggregating nearly \$1,500,000. We do not know definitely whether these concerns were corporations or individuals. It is fairly to be inferred that they were corporations engaged in commerce or manufacture, and that these

so-called loans represented balances due on salaries or commissions left by employees for safe keeping, or were deposits which were encouraged by employers in the promotion of thrift. Whether these concerns were corporations or individuals, we submit that under any of these theories the acceptance of such loans would not indicate that they were engaged in business similar to banking, nor did the testimony show the employment of any moneyed capital in any such business.

There is nothing in the foregoing testimony of any help whatever in determining whether the corporations referred to employed in any business competitive with banking any material amount of capital, or that such capital was taxed at a lower rate than bank shares, regardless of anything else which may be said of it.

There was testimony that Wells-Dickey Company of Minneapolis dealt extensively in bonds and mortgages. There was testimony that the Investment Service Company of St. Paul had negotiated for its patrons mortgages, which remained outstanding in 1921 and 1922, amounting to \$1,100,000. The Provident Loan Society of St. Paul was mentioned and the amount of its capital stock was stated, but since this corporation was obviously not a profit making enterprise, we will not refer to it again. And there was testimony that Lane, Piper & Jaffray of Minneapolis dealt in commercial paper. There was no testimony as to what other lines of business, if any, it engaged in.

The amount of the authorized capital stock of these three corporations appears incidentally in the record. There was no testimony, except that relating to banks and trust companies, as to the capital stock, or as to the capital, of any other corporation anywhere in the testimony or in the exhibits in this case.

So that, taking all of the testimony, there was definite proof that in 1921, \$84,093,438.00 (Exhibit 5, 393), was listed for taxation as money and credits in Ramsey County; shares of national banks of the value of \$14,689,000.00, with resources of \$104,145,000.00 (Exhibit M, 363), were listed for taxation at the ad valorem rate; and, only \$73,500.00 (166), of money and credits of "investment houses" was assessed at the three mill rate. In 1922, \$83,601,268.00 was listed for taxation as money and credits in the county; shares of national banks of the value of \$14,919,000.00, with resources of \$109,561,000.00, (Exhibit M, 363), were listed at the advalorem rate; and, only \$108,890.00 of money and credits of "investment houses" was assessed at the three mill rate (166). The record contains specific reference to the capital or capital stock of only one corporation having its place of business in Ramsey County, Investors Service Corporation, the capital stock of which was \$50,000.00.

For the whole state the proof was that in 1921, \$425,745,839.00 was listed as taxable money and credits (Exhibit 5, 393); shares of national banks of the value of \$73,870,000.00 with resources of \$530,286,000.00 (Exhibit M, 363), were taxable at the ad valorem rate, and, there was no showing whatever, except that made for Ramsey County, as to the listing of any money and credits of investment companies. In 1922, the total money and credit listings of the State were \$400,960,331.00 (Exhibit 5, 393); shares of national banks of the value of \$74,295,000.00, with resources of \$542,968,000.00 were taxable at the ad valorem rate (Exhibit M, 363); and, there was no showing as to listings by investment companies. In lieu thereof there was proof of the authorized capital of two companies, Wells-Dickey Company, \$1,200,000.00 and Lane, Piper

& Jaffray, \$250,000.00, which companies may or may not have been competitors for business with national banks.

We submit that there is no necessity for determining whether these three companies were or were not engaged in any business competitive with national banks, since relatively their capital was not material or substantial compared with the whole amount of money and credits taxable in the state or county, and was not material or substantial compared with the capital or resources of national banks in the state or county.

The amount is "comparatively small looking at the whole amount of personal property and credits which are the subjects of taxation; not large enough, we think, to make a material difference in the rate assessed upon national bank shares" (*Mer. Nat. Bank v. Mayor*, 121 U. S. 138, 161). Although the quotation deals with an exemption, and not with the capital of a corporation alleged to be a competitor of national banks, the Court probably would have made a similar declaration if the institutions under consideration were located in separate taxing districts, where only taxes for the support of the state government, relatively insignificant in proportion to the whole, were burdens shared in common by them. (See *Whitbeck v. Merc. Nat. Bank*, 127 U. S. 193, 198.)

## COMPETITION.

We might well rest this case on the absence of proof of the existence of any substantial amount of capital competing with national banks in Ramsey County, and on the lack of any proof of the existence of any substantial amount of capital elsewhere in the state, since the burden to establish such facts was on defendant. (*Hepburn vs. School Directors*, 90 U. S. 480; *First National Bank of Garnett vs. Ayers*, 160 U. S. 665-667; *First National Bank of Wellington vs. Chapman*, 173 U. S. 205, 215; *Commercial National Bank vs. Chambers*, 182 U. S. 552, 560; *New York ex rel. Amoskeag Savings Bank vs. Purday*, 231 U. S. 373, 392).

But we feel compelled to point out that there may be no safe assumption that, because sales of large amounts of bonds and mortgages were reported to the Federal Reserve Bank at Minneapolis by investment houses of the Twin Cities, either those sales were made in competition with national banks or with defendant bank, or that substantial amounts of capital were employed in the business which made these sales possible, or that such capital came within the operation of the money and credit tax law.

Competition is not shown, we submit, merely by characterizing a corporation as "an investment company." There must be proof of the nature of the business engaged in (*Mer. Nat. Bank vs. Mayor*, 121 U. S. 138, 153, 156); and the business, whatever it be called, must be so similar to that conducted by banks, as to be competitive with banks; it must be such that if the corporations are favored in taxation as compared with taxes on shares of banks, the banks will suffer a disadvantage in carrying on their operations.

Stocks, bonds and mortgages may be bought and sold in large amounts without in any manner affecting banks or their investments. They may be bought and sold in large amounts without employing substantial amounts of capital in the operation. And certainly they may be bought and sold without the employment of any appreciable amount of capital which can be subjected to taxation.

Minnesota corporations are taxable on the property which they own on May 1st, of each year, and their shares are not taxed. There is no violation of Section 5219 in this (*People ex rel. Duer vs. Board*, 123 U. S. 83, 85; *San Francisco National Bank vs. Dodge*, 197 U. S. 70, 79).

If these corporations held for sale stocks of commercial, industrial, or public utility companies on that day, their rate of taxation, or whether they were taxed at all, would be a matter of no consequence under Section 5219 (*Mer. Nat. Bank vs. Mayor*, 121 U. S. 138, 153, 156; *First National Bank of Aberdeen vs. Chehalis County*, 166 U. S. 440). If they held large amounts of United States securities, the exemption of them from taxation would not offend against Section 5219. (*Bank of Redemption vs. Boston*, 125 U. S. 60; *Jenkins vs. Neff*, 186 U. S. 230, 235; *Des Moines Nat. Bank v. Fairweather*, 263 U. S. 103). If they held large amounts of municipal bonds, and were exempt from any taxation on them, there would be no violation of Sec. 5219 (*Mer. Nat. Bank vs. Mayor*, 121 U. S. 138). If they held large amounts of real estate mortgages, or bonds which were secured, as nearly all are, by real estate mortgages, and if those mortgages or bonds were exempt, in the avoidance of double taxation, that exemption, unless the rule has been changed since 1913, would not violate Section 5219 (*Hepburn vs. School Directors*, 90 U. S. 480; *First National Bank of Aberdeen vs. Chehalis County*, 166 U. S. 440,

461). And whether the rule respecting the taxation of real estate mortgages has or has not been changed, the manner of taxing them will be immaterial as against the objection of a bank which does not deal in mortgages, particularly where those dealing in them place their loans through banks. (See *First Nat. Bank of Guthrie Center vs. Anderson*, 269 U. S. 341.)

And this Court has held that certain classes of corporations may engage extensively in buying and selling bonds and mortgages without coming into competition with national banks. Trust companies buy and sell bonds and mortgages; yet this court has held that although they came in competition with national banks they are not within the meaning of Section 5219 (*Mer. Nat. Bank vs. Mayor*, *supra*; *Bank of Redemption vs. Boston*, *supra*; *Jenkins vs. Neff*, *supra*). Savings banks invest in bonds and mortgages and have been held not to be within the Section (*Mer. Nat. Bank vs. Mayor*, *supra*; *Bank of Redemption v. Boston*, *supra*; *Davenport Nat. Bank vs. Board*, 123 U. S. 83). And insurance companies, as a matter of common knowledge, buy huge amounts of bonds and mortgages, and are not deemed competitors of national banks (*Mer. Nat. Bank v. Mayor*; *Bank of Redemption vs. Boston*, *supra*).

It seems to us that the only conclusion which can be drawn from these cases is that, where it is asserted that an individual or corporation is engaged in a business which comes in competition with national banks, the claim is not established by proof, to say nothing of inference, that the business is one of buying or selling bonds or mortgages.

It may be urged that the rule is that whenever an individual or corporation deals in interest bearing securities, the capital used in such business will be deemed moneyed capital coming in competition with national banks merely because a fund is

held in the business use of dealing in such securities, and that whether the securities actually bought and sold are of the kind in which national banks may invest, or are of the kind in which the complaining national bank invests, is immaterial. We do not understand that the decisions of this Court may be so interpreted. Section 5219 aimed in a practical way to prevent discrimination against national banks. It did not undertake to say how the states should tax the moneyed capital of their citizens. The object of Congress was to prevent injury to national banks by making it impossible for the states to give their citizens such advantages in taxation as would hamper national banks in the business which they were authorized to conduct. So far as banks are concerned, whether the income of the individual investor comes from one source or another, can be of little consequence. Their concern arises only out of the manner in which investments of money or uses of money affect their business or earnings. And the use of capital in an investment business will have no effect whatever on them unless the capital is so employed as to reduce the earnings of banks or circumscribe their proper operations. To the extent that investment companies deal in stocks, bonds, mortgages, or other securities of a kind or class which national banks may not invest in, either as a matter of law, or, we submit, as a matter of sound banking practice, their capital is not within the scope of Section 5219, if the purpose of that section be to protect national banks against injurious tax legislation.

Whatever, therefore, may be the precise meaning of Section 5219, it is clear, we submit, that neither individuals nor corporations are to be deemed within its provisions unless their activities are such that a lower rate of taxation on their capital than that applied to bank shares will give them some advantage over national banks in the use which they make of it.

Certainly if in 1921 and 1922, individuals or corporations were actually engaged in competing with national banks in any substantial degree, if during those years national banks were suffering from competition of individuals or corporations and those individuals or corporations were being taxed in such a manner as to give them an advantage in that competition,—if, in a word, the condition which Section 5219 aims to prevent existed, the facts could have been shown. If defendant was appreciably affected by the activities of competitors in any phase of its business, it would have known who those competitors were, the nature of their business and the amount of capital employed by them; and the amount of taxes paid by them, if they were taxable in Minnesota, was readily ascertainable. The absence of such proof tends strongly to show that defendant was not at all affected in any of its banking operations by any such competition and suffered no disadvantage by reason of the operation of either the money and credits law or the mortgage registry law.

ONLY A BANK WHICH IS AFFECTED BY DISCRIMINATORY TAXATION MAY ASSERT A VIOLATION OF SECTION 5219.

It seems to us, that the rulings of this Court mean that when the laws of the state are assailed as producing discrimination forbidden by Section 5219, the proof must be that the bank which asserts discrimination suffers from it.

Albany County vs. Stanley, 105 U. S. 305.

Citizens National Bank vs. Kentucky, 217 U. S. 443.

The rule is that this Court will only determine the constitutionality of a statute in an action where its invalidity is asserted by one showing himself to be injured by its operation.

New York ex rel Hatch vs. Reardon, 204 U. S. 152, 160.

Darnell vs. Indiana, 226 U. S. 390, 398.

We see no reason why a different rule should prevail in determining whether a state taxing statute is in conflict with Section 5219.

Here defendant bank was obliged to show, but did not, that individuals employed moneyed capital in competition with the business which it rightfully conducted in St. Paul. If defendant bank did not invest in real estate mortgages, during the years 1921 and 1922, it was not prejudiced by the state's method of taxing mortgages or capital invested in mortgages; if it invested only in government bonds and listed bonds, it was not prejudiced in the state's method of taxing bonds, or capital invested in bonds, of any other class; unless, of course, its failure to invest in mortgages or other classes of bonds was caused by state tax legislation dealing with securities in those classes, of which there is no intimation or proof. If defendant did

not "deal" in bonds, that is, if it did not use its funds for the purpose of buying and selling bonds with a view to making a profit on the turn over, as clearly it did not, then it could not have been affected by the state's system of taxing those who did deal in them.

ARE CORPORATE SHARES MONEYED CAPITAL "IN THE HANDS OF  
INDIVIDUAL CITIZENS"?

We have assumed that shares of corporations employing capital in competition with national banks will constitute moneyed capital in the hands of individual citizens. Of course, state banks and their shares are covered by the Act.

This court frequently has said that shares of stock in financial corporations may be moneyed capital in the hands of individual citizens, and that Section 5219 may be violated in the method of taxing corporations whose business is competitive with banking.

Hepburn vs. School Directors, 90 U. S. 480.

Mercantile Nat'l. Bank vs. Mayor, 121 U. S. 138, 156.

First Nat'l. Bank of Aberdeen vs. Chehallis County, 166 U. S. 440, 445.

Merchants Nat'l. Bank vs. Richmond, 256 U. S. 635, 639.

It never has had occasion, however, directly to decide such an issue. And we believe that there are no facts in this record requiring such a decision now. We merely point out that there are difficulties in the way of such a ruling. Nowhere more than in the interpretation and application of this Section has the Court more closely adhered to the theory that a stockholder has no ownership or title to the property of the corporation. Nowhere has it held more firmly to the doctrine that there is no identity between the shareholder and the corporation. Under such a theory there can be no difference between one who holds a share of stock in a financial corporation and one who holds a share of stock in a railway corporation. The shareholder in the financial corporation is not engaged in making investments in competition with banks any more than the

individual who holds railroad stocks is engaged in railroading; he simply has bought a share of corporate stock giving him the right to receive dividends if they are earned and to share in the assets of the corporation on its dissolution.

Bank Tax Cases, *Van Allen vs. Assessor*, 70 U. S. 573, 584.

*Home Savings Bank vs. Des Moines*, 205 U. S. 503, 515.

*Des Moines Nat. Bank vs. Fairweather*, 263 U. S. 103, 112-114.

The principal operations of national banks are obviously those of receiving deposits and making commercial loans. And almost total protection is afforded them against discriminatory taxation when individuals and corporations who compete with them in those activities are taxed at as high a rate as the banks or their shareholders. In the investments which banks may make, such as the buying of government bonds or other bonds, local taxes or tax rates are not a factor, since values are made in competition with investors in every community and in every state. This is demonstrated in the fact that national banks set themselves up in every city in the state and almost in every village, although tax rates vary in a marked degree in these different communities.

Corporations which engage in the business of receiving deposits are classed as banks and taxed as banks. (Private banking is not permitted in Minnesota.) And neither individuals nor corporations engage in the business of making commercial loans except as note brokers. The capital employed by brokers may be negligible, and as indicated in the testimony here, they engage chiefly in the occupation of making loans for banks in competition with other banks in different localities.

Furthermore, it will make no great practical difference whether corporations, dealing in stocks and bonds are taxed at a higher or lower rate than bank shares, in any state where taxes are levied under the so-called "ad valorem" system. And that system prevails over a large part of the country. Under such a system the corporation is ordinarily taxed upon its property or on its capital. And usually in the avoidance of double taxation, no separate tax will be levied on its stockholders. This is the system in Minnesota. If taxes are assessed upon capital, even though at the same rate as on bank shares, they may be largely, if not wholly, unenforceable because the capital of any such corporation may well be invested in Government, State, Municipal, or other tax exempt securities. And the same result may follow, although in a lesser degree, when taxes are assessed against the property of such a corporation.

We say, therefore, that little, if anything, in the way of practical protection is afforded by going beyond the letter of the law and holding that owners of stock in corporations, which deal in bonds or mortgage, are the holders of capital used in dealing in bonds and mortgages and come, or may come, in competition with the business of national banks.

THE MONEY AND CREDITS LAW DOES NOT VIOLATE THE SPIRIT  
OF SECTION 5219, SINCE IT WAS NOT ENACTED IN HOSTILITY  
TO NATIONAL BANKS AND IS NOT INJURIOUS TO THEM.

The Money and Credits Tax Law of Minnesota was not enacted in hostility to national banks, nor in a spirit of favoritism toward moneyed capital in any form. It was adopted for the purpose of collecting more taxes on money and credits than the state previously had been able to recover. In one of its major aspects then, it does not offend against the provisions of Section 5219. Its enactment followed the report and recommendation of the State Tax Commission, a portion of which is contained in the record (State's Exhibit 4, 389-392). The Commission advised the legislature that "the attempt to tax money, credits and securities at the same rate as other classes of property has everywhere and always proved a failure" (389). It said also that no small part of the intangible property to be taxed under the Act represented tangible property which already was taxed in Minnesota or elsewhere (390). But mainly the recommendation rested on the belief that a tax on this class of property at a low fixed rate would produce more revenue than could be collected under the existing system which endeavored to assess such property at the same rate as real and tangible personal property. And the results shown by the comparison of the receipts, both for the State and County before and after the passage of the Act, set forth in our statement of facts (page 23 to 25, Ante) justified the Commission's opinion.

Section 5219 was not aimed at legislation of this kind. If, accidentally, in the whole amount of money and credits brought within the scope of the law, there is caught a relatively insig-

nificant amount of capital coming in competition with national banks, not in the essential functions of such banks, but in respect of one or more of their privileges, the law is not one to be denounced under Section 5219. This Court has said:

"The plain intention of that statute was to protect the corporations formed under its authority from unfriendly discrimination against them of the power of state taxation."

Adams vs. Mayor, 95 U. S. 19, 22.

"As Congress was conferring a power on the States which they would not otherwise have had, to tax these shares, it undertook to impose a restriction on the exercise of that power, manifestly designed to prevent taxation which should discriminate against this class of property as compared with other moneyed capital. In permitting the State to tax these shares, it was foreseen—the cases we have cited from former decisions have showed too clearly—that the state authorities might be disposed to tax the capital invested in these banks oppressively."

People of New York vs. Weaver, 100 U. S. 539, 543.

"The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks was to render it impossible for the State, in levying such a tax, to create and foster an unequal and friendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the Act of Congress is to be read in the light of this policy."

Mercantile National Bank vs. Mayor, 121 U. S. 138, 155; also First National Bank of Wellington vs. Chapman, 173 U. S. 205, 213.

"According to the stipulation in this case, the deposits in such banks amount to \$437,107,501, with an accumulated surplus of \$68,669,001. It cannot be denied that

these deposits constitute money capital in the hands of individuals within the terms of any definition which can be given to that phrase; but we are equally clear that they are not within the meaning of the Act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty. To promote their growth and progress is the obvious interest and manifest policy of the State. Their multiplication cannot in any sense injuriously affect any legitimate enterprise in the community. We have already seen that by previous decisions of this court it has been declared that 'it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt'—*Hepburn vs. School Directors*, 23 Wall. 480 (*supra*)—and that 'the Act of Congress was not intended to curtail the state power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property, if the Legislature chose to do so.' *Adams vs. Nashville*, 95 U. S. 19 (24:369). The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the State exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks, provided they are taxed at a rate not

greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation."

*Mercantile National Bank vs. Mayor*, 121 U. S. 138, 160, *supra*.

"It is essential, if the law of the state is to be declared invalid under the limitations expressed in the United States statute, that the enactment of the legislature shall evidence a disposition to evade or override the spirit of the limiting statute."

*Jenkins vs. Neff*, 186 U. S. 230, 237.

"The objection made by the bank to the state's plan must rest not upon the mere fact that the depositors in national banks are taxed upon their credits, or that they are taken out of the system of local taxation, but upon the ground that the measure adopted is essentially inimical to national banks, frustrating the purpose of national legislation, or impairing their efficiency as Federal agencies."

"To be open to such an objection, it must appear that the scheme of taxation constitutes an injurious discrimination. \* \* \* The object is to prevent hostile discrimination, and for that purpose a standard is fixed."

*Clement National Bank vs. Vermont*, 231 U. S. 120, 135.

"Its main purpose is to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a business similar to that of national banks, or engaging in operations and investments of a like character."

*Des Moines National Bank v. Fairweather*, 263 U. S. 103, 116.

National Banks or their shareholders have no meritorious ground of complaint in the result of the actual operation of

the law. Theoretically, taxes on moneyed capital were reduced by the terms of the Act; actually, they were increased. Theoretically, looking at rate numerals only, taxes on moneyed capital which might come in competition with national banks were reduced; practically, any moneyed capital which might come in competition with banks was compelled, or rather induced, to pay taxes where previously it had paid none. We say that previously it paid no taxes because virtually only money and credits in the hands of guardians, administrators, and the like, were reached for taxation before the enactment of this law.

On the whole, national banks shared with all other tax payers the beneficial provisions of this act, which resulted in the collection of more taxes from money and credits, thereby reducing the common burden.

THE TAX RATE ON SHARES OF NATIONAL BANKS WAS, FAIRLY  
COMPARED, NO GREATER THAN THE TAX RATE ON  
MONEY AND CREDITS.

Nowhere in the record is there any testimony as to the taxes actually charged against any investment company. It is assumed that taxes assessed against their property at the three mill rate were lower than taxes on bank shares. Even if this assumption were valid, the conclusions that, fairly compared, taxes upon these companies would be at a lower rate than taxes on bank shares, would not follow. All such corporations are taxed on all of the property which they own. They are not taxed upon their capital or upon their shares. For instance, their capital might be invested in an office building from which their business might be conducted. Its ownership could well give them any credit which they might need. Or they might, in order to multiply their purchases of securities, pledge them and repledge them so that their stocks and bonds, and foreign mortgages might be many times their invested capital, in which event their taxes even at the three mill rate might equal taxes on bank shares, there being no right of deducting debts under the Act. On the other hand, in the very nature of their business, their resources might be invested in tax exempt bonds, or stocks of Minnesota corporations, in which event there would be no application of the Money and Credits Law at all. And of this there could be no complaint under the provisions of Section 5219 (*Mercantile National Bank of New York vs. Mayor*, 121 U. S. 138, 160; *Des Moines National Bank vs. Fairweather*, 263 U. S. 103; *Jenkins vs. Neff*, 186 U. S. 230, 235). The record does not enable us to say what the three mill rate on the gross resources of any investment corporation equaled in rate per hundred dollars of

capital. We know the capital of only three corporations. There is no showing as to the resources of any corporation. We do not know what taxes any of them actually were required to pay. This, mainly, is why we say that there is no evidence whatever upon which the Court can declare that any moneyed capital, competing or not competing, was taxed at a lower rate than the tax on bank shares.

In order to determine whether or not moneyed capital of corporations which are assessed on their total resources is at a lower rate than taxes assessed against shares of a corporation, a comparison must be made either by taking the taxes on resources and ascertaining the rate which they would equal if assessed on shares, or by taking the rate on shares and ascertaining the rate which they would equal in taxes or resources.

The record does not permit making the first of these comparisons. The second can readily be made.

We have the resources, capital and taxes of defendant bank, and of all national banks in Ramsey County, and we have the resources and capital of all national banks in the State, and the average tax rate for the whole State. In our statement of facts (ante page 25) we have set forth the calculations based upon this evidence. They show that taxes assessed against shares of national banks were substantially equal to a tax of three mills on their resources. The aggregate resources of banks constitute their true capital, the capital to which they legally are entitled and which they possess and enjoy in the sense that they loan and invest it and reap the same harvest of interest and profit which any other individual or corporation may have of its own money or credits; "shares of the national banks, while they constitute the capital stock of the corporations, do not represent the whole amount of the capital actually employed by them \* \* \* deposits constitute

a large part of the actual capital profitably employed by the banks in the conduct of their banking business." *Bank of Redemption vs. Boston*, 125 U. S. 60, 67. When we compare, in this way, banks and individuals, or banks and investment companies, consideration must be given the money or credits which enables either to make loans or to invest in securities. The resources of the banks and not merely their invested capital are employed for that purpose. Others may only employ such capital as they own and use in their business. If, therefore, we are to give effect to the spirit of Section 5219, the tax burden upon the invested capital of the private individual or corporation must be compared with the tax burden on the usable capital of national banks. As we have seen, if, and to the extent that competition between investment companies and national banks can be conceived of it occurs when such companies and banks come into the market and bid against each other in the purchase of interest bearing securities, such as bonds and mortgages. In this field the investment companies will employ their invested capital (together with such capital as they may borrow from banks, which need not be considered) and the banks will employ their resources, not merely their invested capital. There will be equality of competition, and the object of Section 5219 will be accomplished, if the capital which actually is used in bidding for or buying such securities bears equal tax burdens. And since the taxes which were charged against the shareholders amounted to no more than three mills on each dollar which the bank invested, there was no discrimination in favor of its competing investor who had to pay not less than three mills on each dollar which he invested.

This Court has declared that the Federal Act does not require merely equality of rates, that it commands equality of

taxes (*People v. Weaver*, 100 U. S. 539), that it has "to do with the actual incidence and practical burden of the tax payer" (*New York ex rel Amoskeag Savings Bank vs. Purdy*, 231 U. S. 373); and it has clearly indicated that it will compare actual results in taxation for the purpose of determining whether taxes on bank shares are higher than taxes on competing moneyed capital (*Mercantile National Bank vs. Mayor*, 121 U. S. 138; *New York ex rel. Amoskeag Savings Bank vs. Purdy*, 231 U. S. 373 *Bank of Redemption vs. Boston*, 125 U. S. 60, 66; *San Francisco National Bank vs. Dodge*, 197 U. S. 70, 79, 81). We submit, therefore, that there is no evidence in the record showing that any corporation engaged in the investment business was taxed at a lower rate—that is, that taxes assessed against such corporations, if they had been charged directly against stockholders, were relatively lower—than taxes on bank shares. We submit that no discrimination was shown, within the meaning of Section 5219, in the taxation of bank shares at the 67 mill rate or the 61.5 mill rate, when actually that rate was but the equivalent of a rate of 3 mills on their moneyed resources.

#### OTHER DEFENSES OF THE BANK.

The decision of the Court below was based solely upon the operation of the Money and Credits Law. Defendant urged other grounds of objection, which either were not considered, as its contention relating to the operation of the gross earnings tax on trust companies, or were not decided, as its contention respecting the manner of taxing real estate mortgages, or were decided against it, as its contention that the manner of taxing state banks offended against Section 5219. We assume that each of these objections are open for consideration here and we discuss them, briefly, in their order.

## TRUST COMPANIES.

It is contended that because trust companies were taxed at the rate of five per cent upon their gross earnings, and because a tax at that rate may be lower than the tax on bank shares, the Federal Act prevented the collection of the taxes assessed in this proceeding. The contention is based upon proof that in 1921 the Northwestern Trust Company of St. Paul paid gross earnings taxes amounting to \$15,832.22, when, if its taxes had been calculated as taxes on bank shares were, the taxes would have been \$27,762.51 (Exhibit J, 360, 155). There was no showing as to its gross earnings taxes for 1922. And there was no like showing as to any other trust company.

This Court has ruled that trust companies, while competing to some extent with national banks, are not within the meaning of the Federal Act.

Mercantile Nat. Bank vs. Mayor, 121 U. S. 138.

Bank of Redemption vs. Boston, 125 U. S. 60.

Jenkins v. Neff, 186 U. S. 230, 234.

The evidence, we submit, is not sufficient to establish satisfactorily that this system of taxing trust companies was unfavorable to national banks, although it undoubtedly operated that way in one year as to one company.

All of the witnesses who testified on the subject expressed on cross-examination the opinion that trust companies and banks were not in a practical sense competing institutions (40-43, 99-103, 142). On recross examination they said, in effect, that, since all capital was in competition, trust companies and banks were in competition. It is a significant fact that all the large trust companies in St. Paul were, in different degrees, affiliated with or connected with national banks. The Minne-

apolis Loan & Trust Company was so affiliated (269). Furthermore, all of the large trust companies in both cities, excepting alone the Northwestern Trust Company, received deposits and were taxed as banks.

The Northwestern Trust Company was affiliated with the defendant in error. Stockholders of the bank owned 87% of the stock of the trust company (68, 69) and six or seven per cent more of its stock was held in trust funds managed by the trust company.

So that the shareholders of the First National Bank are here contending that the Act of Congress was violated because a company beneficially owned by them was taxed at a lower rate than their bank shares. We submit that they will not be heard on such a complaint any more than they would be heard to complain that the taxes on their shares in the bank were too low. *Stanley vs. Albany County*, 121 U. S. 535, 549; *Bank vs. Fairweather*, 262 U. S. 103, 111.

## MORTGAGES.

It is contended that mortgages are taxed at a lower rate than bank shares in violation of Section 5219. In the Court below the theory advanced was that all mortgages, however held or used, constituted moneyed capital coming in competition with national banks. We think that contention is foreclosed.

There remains the question whether the taxation of mortgages at the rate of 15¢ per hundred dollars on loans due within five years and sixty days and at the rate of 25¢ per hundred dollars on longer loans, insofar as it operates on persons or corporations engaged in the business of making and disposing of such mortgages, defeats taxation of shares of national banks at a higher rate. The Supreme Court of Minnesota said that prior to the Act of December 23, 1913 (38 Stat. 273) the failure to tax mortgages at the rate equal to bank shares was not a violation of Section 5219. It cited *Hepburn v. School Directors*, 90 U. S. 480; *Adams vs. Nashville*, 96 U. S. 19, and *Mercantile National Bank vs. Mayor*, 121 U. S. 138. *First National Bank of Aberdeen vs. Chehalis County*, 166 U. S. 440, 461, might have been added. Since 1913, national banks may, within prescribed limits, make loans secured by real estate. The Court said it was not necessary to determine the question and expressed no opinion on it (321). This Court did not definitely rule upon it in *First National Bank vs. Anderson*, *supra*.

There is no evidence that any individual in Minnesota was engaged in the mortgage loan business. There is testimony that certain trust companies, two investment companies and certain banks dealt in mortgages.

The Minnesota statute under which banks are taxed includes mortgage loan companies. The Supreme Court of Minnesota has never had occasion to determine what companies come within this statute. The Attorney General has been called upon to give an opinion in respect of only a single company and his ruling (not published) affecting the Provident Loan Company, referred to in the record, declared only that it did not include companies loaning on chattel security. It is probable that the Supreme Court of Minnesota will hold that any company dealing in real estate mortgage loans to such an extent as to come in competition with national banks is within the statute. This would dispose of the question as to all companies described in the record except the Northwestern Trust Company, which deals in mortgages to some extent, and which is not taxed under the statute relating to banks. What we have said of that company under the head "Trust Companies" applies here.

There is more to be said.

The First National Bank did not loan money on mortgages, nor deal in them (217, 218). It sometimes took notes and mortgages owned by country banks as collateral security (217), but the activity of others which puts country banks, or other patrons of the bank, in a position to borrow money of the bank can hardly be said to be one competitive with banking. And we are unable to see in the loaning of money on collateral mortgage security any substantial participation in the business of dealing in mortgage loans.

Again, in this record there is proof, in a large measure, of the fact that was assumed by the Supreme Court of Iowa in *First National Bank vs. Anderson*, supra. In every instance in which testimony was given as to the methods of negotiating farm mortgages, it was said that they were negotiated through

local banks. This was the practice of the Wells-Dickey Company (20), the Merchants Trust & Savings Bank (98, 99). The Capital Trust & Savings Bank (141), and the Southern Minnesota Joint Stock Land Bank (87, 88). In fact, one of the officers of the Land Bank said that any application coming to it, not originating with a local bank, was referred to one, and a commission was paid to a local bank on account of any mortgage originating in the bank's territory. And wherever there was any testimony on the subject, it was stated that the local banks were in charge of the collection of principal and interest on mortgages on their territory (87, 88). There was no testimony of any different practice. This was the practice as to farm mortgages. What testimony there was as to city mortgages declared that they come without banking participation. Banks may not loan on city real estate for a longer period than one year. The testimony was that such loans were undesirable from the standpoint of those dealing in mortgage securities and were negligible (61, 62, 141). So that if the amendment of 1913 operated to change the rule as to what constitutes competing moneyed capital as announced in the earlier decisions of this court, it could only change it as to farm mortgages, and as to farm mortgages investment companies act only as adjuncts of the banks. As to city mortgages there was and could be no material or substantial employment of moneyed capital in competition with the banks.

## STATE BANKS.

Until 1921 the shares of state banks, national banks and mortgage loan companies (the last since 1905) were taxed under one statute, and all were taxed alike. In 1921, the law was amended so as to provide for the assessment of banks and mortgage loan companies directly, that is, the shares were not taxed but the corporations were. The method of determining the tax, the rate, and all other features remained precisely as before. It is claimed that this amendment resulted in discrimination in favor of state banks, because as a result, state banks thereby became entitled to deduct from their capital all investments in bonds of the United States Government, and the proof was that state banks in Ramsey County and in the State held large amounts of government bonds. The State Court merely said "we think that the method adopted is permissible under the doctrine of *People vs. Commissioners of Taxes*, 71 U. S. (4 Wall.) 244, 18 L. ed. 344; *Mercantile National Bank vs. Mayor, etv.*, 121 U. S. 138, 30 L. ed. 895; and *Des Moines National Bank v. Fairweather*, 263 U. S. 103, 68 L. ed. 191."

On the argument in the State Court, it was contended principally by counsel for the state that the evidence shut out any controversy on this question. And while submitting the question on the authorities cited by the State Supreme Court, petitioner relies principally now on the facts.

It was proved beyond dispute that during the years 1921 and 1922, each state bank submitted to taxation upon its whole capital. Each bank paid taxes assessed upon precisely the same basis as shares of national banks. There was no deduction anywhere of any amount invested in government bonds, or of any other tax exempt bonds. On the contrary, as the

record indicates, the only deduction claimed by any state bank was rested upon the assertion that because one of its shareholders was a charitable organization and exempt from taxation its taxes should be reduced accordingly, and this claim was allowed exactly as it would have been if shareholders, rather than the corporation, were taxable (251). The contention of the bank in this respect is that under the amendment of 1921 discrimination might have been practiced but was not.

We submit that where, as here, state banks actually paid taxes assessed on the same basis as shareholders of national banks, there can be no valid complaint based merely on the form of the law. What was done under the law, everywhere and as to every state bank, is controlling.

In *First National Bank of Gulfport vs. Adams*, 258 U. S. 362, 365, this court said, in determining whether taxes there assessed were on shares, or were assessed directly against the bank, "Where the validity of an assessment by officers of the state is properly challenged, and the matter comes here, this court must determine the effect of the thing actually done. What might have been done under the local statutes is not controlling."

We respectfully submit that on the whole record this case is not one showing a violation of Section 5219.

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**APPENDIX.****Sec. 5219, R. S.**

Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

Sec. 5219, as amended. Act of March 4, 1923. (Chap. 267, p. 1499, Vol. 42, U. S. Stat. at Large.)

The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may tax said shares, or include dividends derived therefrom in the taxable income of an owner or holder thereof, or tax the income of such associations, provided the following conditions are complied with:

"1. (a) The imposition by said State of any one of the above three forms of taxation shall be in lieu of the others.

“(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: PROVIDED, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

“(c) In case of a tax on the net income of an association, the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon the net income of mercantile, manufacturing, and business corporations doing business within its limits.

“(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

“2. The shares of the net income as above provided of any national banking association owned by non-residents of any State, or the dividends on such shares owned by such non-residents, shall be taxed in the taxing district where the association is located and not elsewhere; and such associations shall make return of such income and pay the tax thereon as agent of such nonresident shareholders.

“3. Nothing herein shall be construed to exempt the real property of associations from taxation in any state or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

"4. The provisions of section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section."

Approved, March 4, 1923.

MINNESOTA ACT TAXING SHARES OF NATIONAL BANKS AND  
CAPITAL OF STATE BANKS AND MORTGAGE LOAN COMPANIES.

Chapter 416—H. F. No. 498 (Laws, Minn. 1921).

An act providing for the assessment and taxation of the shares of stock of banks organized under the laws of the United States and the moneyed capital of banks and mortgage loan companies organized under the laws of this State, and repealing Sections 2017 and 2020, General Statutes of 1913, and other acts inconsistent herewith.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. ASSESSMENT OF BANK STOCK.—The shares of stock of every bank in this State organized under the laws of the United States, and the moneyed capital of every bank or mortgage loan company organized under the laws of this State shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located.

Sec. 2. ASSESSED AND TAXED AGAINST HOLDERS OF RECORD IN NAME OF BANK—TAX PAID BY BANK.—The shares of stock of banks organized under the laws of the United States shall be assessed and taxed against the holders thereof, but in the name of the bank, and stockholders, regardless of where such stockholders may reside. The moneyed capital of every bank and mortgage loan company organized under the laws of this State shall be assessed and taxed against such bank or mortgage loan company, and the taxes levied thereon shall be paid by such bank or mortgage loan company.

Sec. 3. OFFICERS TO MAKE STATEMENT FOR ASSESSORS.—To aid the assessor in determining the value of the shares of stock of national banks and the value of the moneyed capital of state

banks and mortgage loan companies, the cashier or other accounting officer of every such bank or mortgage loan company shall furnish a sworn statement to the assessor, showing the amount and number of shares of the capital stock, the amount of its surplus, undivided profits and all other funds, and the amount of its legally authorized investments in real estate located in this State, which real estate shall be assessed and taxed in the same manner as other real estate. The assessor shall deduct the amount of such legally authorized investments in real estate from the aggregate amount of such capital. Surplus, undivided profits, and other funds, and the remainder shall be taken as a basis for determining the taxable value of the shares of stock of banks organized under the laws of the United States and of the moneyed capital of banks and mortgage loan companies organized under the laws of this State.

Sec. 4. TAX DEDUCTED FROM DIVIDENDS.—To secure the payment of taxes levied against the stockholders of banks organized under the laws of the United States every such bank shall, before declaring any dividend, deduct from the annual earnings of the bank such amount as may be necessary to pay any such taxes so levied against such stockholders, and such bank or the officers thereof shall pay the taxes and shall be authorized to charge the amount thereof to the expense account of such bank.

Sec. 5. INCONSISTENT ACTS REPEALED.—Sections 2017 and 2020, General Statutes of 1913, and all other acts or parts of acts, in so far as they are inconsistent herewith, are hereby repealed. But such repeal shall not affect the validity of any taxes levied or assessed by virtue of said sections and all such taxes shall be paid and proceedings for payment taken accord-

ing to the provisions of said sections and other laws in force at the time of the assessment and levy thereof.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved April 21, 1921.

## MONEY AND CREDITS TAX LAW.

Chapter 285—H. F. No. 321. (Laws, Minn. 1911.)

An Act establishing a uniform tax on certain classes of personal property.

Be it enacted by the Legislature of the State of Minnesota:

TAXATION OF MONEY AND CREDITS.—Section 1. "Money" and "credits" as the same are defined in section 798 "Revised Laws of 1905" are hereby exempted from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.

But nothing in this act shall apply to money or credits belonging to incorporated banks situated in this state, nor to any indebtedness on which tax is paid under chapter 328, General Laws of 1907.

HOW LISTED.—Sec. 2. All "money" and all "credits" taxable under this act shall be listed in the manner provided in section 816 "Revised Laws of 1905," but such listing shall be upon a separate blank from that upon which other personal property is listed.

\* \* \* \* \*

STATEMENT TO BE MADE UNDER OATH.—Sec. 5. The assessor shall in all cases require a person bringing in a list to make oath that it is as nearly correct as he is able to make it and this oath shall be attached to and be a part of such list.

Such list shall be open to the inspection of the assessor, county auditor, their deputies and clerks, the board of review, the board of equalization, their clerks, the Minnesota tax commission and its assistants and clerks, but the details of the lists made by tax payers shall be disclosed to no other person

except by order of court, and any assessor or other person who shall disclose such details shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars. The lists shall be delivered by the assessor to the county auditor and by him preserved.

ASSESSOR TO ACCEPT AS TRUE.—Sec. 6. The assessors shall receive as true except as to valuation, the list brought in by each person, unless on being thereto required by the assessor he refuses to answer on oath all reasonable and necessary inquiries as to the nature and amount of his property taxable under the provisions of this act.

\* \* \* \* \*

APPORTIONMENT OF RECEIPTS.—Sec. 13. All taxes paid to the county treasurer under the provisions of this act shall be apportioned, one-sixth to the revenue fund of the State of Minnesota, one-sixth to the county revenue fund, one-third to the city, village or town and one-third to the school district in which the property is assessed.

Sec. 14. This act shall take effect and be in force from and after its passage.

Approved April 19, 1911.

#### DEFINITION OF "MONEY" AND "CREDITS".

1. "Money" or "moneys" shall mean gold and silver coin, treasury notes, bank notes, and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this state, is entitled to withdraw in money on demand. Sec. 798, Subd. 1, Rev. Stat., Minn. 1905.

2. "Credits" shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum

of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations the property of which is not assessed or taxed in this state. Chap. 130, Laws Minn., 1917.

## MORTGAGE REGISTRY TAX LAW.

Chapter 328—H. F. No. 561 (Laws Minn. 1907, as amended by Chap. 445, Laws 1921).

An Act to provide for the taxation of mortgages of real property.

Be it enacted by the Legislature of the State of Minnesota:

MORTGAGE DEFINED.—Section 1. The words "real property," "real estate" and "land," as used in this act, in addition to the definitions thereof contained in the Revised Laws 1905, shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the words "mortgage," as so used, shall mean any instrument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price. No instrument relating to real estate shall be valid as security for any debt, unless the fact that it is so intended and the amount of such debt are expressed therein. But a mortgage given to correct a misdescription of the mortgaged property, or to include additional security for the same indebtedness, shall not be subject to the tax imposed by this act; nor shall a mortgage securing the same and other indebtedness, additional to that upon which such tax has been paid, be taxable hereunder, except for such added sum.

Sec. 2. A tax of fifteen cents is hereby imposed upon each hundred dollars, or fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured by any mortgage of real property situate within the state executed and delivered after the passage and approval hereof and recorded or registered hereafter; provided that any such mortgage heretofore executed and delivered shall not be recorded in section 2 hereof as originally enacted; provided further that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee; and provided further that if the maturity of any portion of said debt secured by the said mortgage, as therein stipulated, shall be fixed at a date more than five years and sixty days after the date of said mortgage, then and in that case the tax to be paid on such portion shall be at the rate of twenty-five cents on each hundred dollars or fraction thereof. (As amended Chap. 445, Laws of Minnesota, 1921.)

IN LIEU OF ALL OTHER TAXES.—Sec. 3. All mortgages upon which such tax has been paid, with the debts or obligations secured thereby and the papers evidencing the same, shall be exempt from all other taxes; but nothing herein shall exempt such property from the operation of the laws relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks, or trust companies; provided, that this act shall not apply to mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation by law, or is taxed upon the basis of gross earnings, or other methods of commutation in lieu of all other taxes.

**MORTGAGES IN TRUST.—Sec. 4.** If a mortgage is made to a mortgagee in trust, to secure the payment of bonds or other obligations to be issued thereafter, a statement may be incorporated therein of the amount of such obligations already issued or to be issued forthwith, and the tax to be paid on filing such mortgage for record or registration shall be computed upon the amount so stated. Such statement shall be binding and conclusive upon all persons claiming through or under the mortgage, and no such obligation issued in excess of the aggregate so fixed shall be valid for any purpose unless the additional tax thereon be paid and the receipt of the proper county treasurer therefor be endorsed thereon.

\* \* \* \* \*

**NOT RECORDED UNTIL TAX IS PAID.—Sec. 7.** No such mortgage, no papers relating to its foreclosure, nor any assignment or satisfaction thereof shall be recorded or registered after April 30, 1907, unless said tax shall have been paid; nor shall any such document, or any record thereof, be received in evidence in any court, or have any validity as notice or otherwise.

**MORTGAGES—PROVISION.—Sec. 8.** All mortgages of real estate recorded or registered prior to April 30, 1907, shall be taxable as provided by law under the provisions of law relating thereto prior to the enactment hereof, provided, that the holder of any such mortgage may pay to the treasurer of the proper county, or the state treasurer, or both, the tax herein prescribed upon the amount of the debt secured by such mortgage at the time of such payment, as stated by the affidavit of the owner of such mortgage, to be filed with the county treasurer, and have the treasurer's receipt countersigned by the auditor endorsed thereon. The register of deeds or secretary of state, as the case may be, on presentation of such receipt, shall note

on the margin of the mortgage record the date and amount of such payment. Thereafter such mortgage debt shall not be otherwise taxable.

**TAX—HOW DISTRIBUTED.—**Sec. 9. All taxes paid to the county treasurers under the provisions of this act shall be apportioned and distributed in the same manner as real estate taxes paid upon the real estate described in the mortgage.

Sec. 10. This act shall take effect and be in force from and after April 30th, 1907.

Approved April 23, 1907.